

**VIRGINIA WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
SUGAR CREEK TRUCKING COMPANY, INC.**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Sugar Creek Trucking Company, Inc. for the purpose of resolving certain violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “ASTs” means aboveground storage tanks.
7. “SCTC” means Sugar Creek Trucking Company, Inc.
8. “Facility” means the ASTs, associated property presently owned by SCTC, and located on Route 58 in Jonesville, Virginia.

9. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon , Virginia.
10. "SWCBR" means the State Water Control Board Regulations, 9 VAC 25-91-10 *et seq.* and 9 VAC 25-580-10 *et seq.*
11. "ODCP" means Oil Discharge Contingency Plan.

SECTION C: Findings of Fact and Conclusions of Law

1. In 1979, Mr. Bill Carter began operating a petroleum distribution business called Jonesville Oil Company, Inc. in Jonesville, Virginia. The six ASTs used to store petroleum products at the Facility had an aggregate capacity of approximately 96, 000 gallons.
2. Code § 62.1-44.34:15 and SWCBR 9 VAC 25-91-20 B3 and -170 require facilities having aboveground oil storage capacity of 25,000 gallons or greater to develop an oil discharge contingency plan for approval by DEQ. SWCBR 9 VAC 25-91-120 provides the requirements for closure of an AST site.
3. Between January 1993 and November 1994 DEQ issued four Notices of Violation ("NOV") to Mr. Bill Carter for failing to register the ASTs and to providing DEQ with an ODCP for the Facility.
4. SCTC purchased the Facility in 1996 at public auction. SCTC neither registered nor closed the ASTs.
5. On January 26, 1999, following a pollution complaint (PC #99-0371), DEQ conducted an investigation of the Facility. The complaint concerned an oil release at the Facility on or about January 25, 1999. A release had occurred at a pipeline shut off valve coming from one of the ASTs. DEQ told Mr. Bill Carter, who was on site, that the spill must be contained, cleaned up and proper disposal of the contaminated soils.
6. Following the release and investigation DEQ sent a letter to SCTC identifying all necessary abatement measures it must take to mitigate the effects of the spill. SCTC never provided a report describing its clean up actions and the results of such.
7. In April 1999 DEQ sent two letters to SCTC, notifying SCTC that it must register all ASTs with DEQ and that it must develop and file an ODCP.
8. On June 18, 1999, DEQ issued a Letter of Noncompliance to SCTC alleging that SCTC failed to register the ASTs, failed to submit an ODCP, and failed to submit a site characterization report following the release.

9. DEQ issued a NOV on August 26, 1999, which was later amended on December 6, 2000, alleging that SCTC did not register its ASTs as required by Code § 62.1-44.34:19.1 and 9 VAC 25-91-100; did not file an ODCP as required by Code § 62.1-44.34:15 and 9 VAC 25-91-170 or in the alternative properly close its ASTs as required by Code § 62.1-44.34:18 and 9 VAC 25-91-120.
10. Code § 62.1-44.34:19 states that any person discharging or causing or permitting a discharge of oil into or upon state water or lands shall immediately upon learning of such discharge notify the Board and the director or coordinator of emergency services.
11. Code § 62.1-44.34:18 prohibits the discharge of oil into or upon state waters, lands or storm drain systems within the Commonwealth of Virginia. The operator of a facility responsible for such discharge shall immediately implement any approved oil discharge contingency plan or take such other action as may be deemed necessary in the judgement of the Board to contain and clean up such discharge.
12. Code § 62.1-44.34:14 and SWCBR 9 VAC 25-91-10 define “containment and cleanup” as the abatement, containment, removal and disposal of discharged oil and to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, orders SCTC, and SCTC agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders SCTC, and SCTC voluntarily agrees, to pay a civil charge of **\$5,000** within **30 days** of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia”, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include the Facility's Federal ID number or Social Security number if the Facility does not have a Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of SCTC, for good cause shown by SCTC, or on its own motion after notice and opportunity to be heard.

2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, SCTC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. SCTC consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. SCTC declare they have received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by SCTC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. SCTC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. SCTC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. SCTC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and SCTC. Notwithstanding the foregoing, SCTC agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to SCTC. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SCTC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. By its signature below, SCTC voluntarily agree to the issuance of this Order.

And it is so ORDERED this day of _____, 2002.

Robert G. Burnley, Director
Department of Environmental Quality

Sugar Creek Trucking Company, Inc. voluntarily agrees to the issuance of this Order.

By: _____
Donald Carter, President

Date: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this ____ day of _____, 2002, by ____ Donald Carter _____, who is president of SCTC, on behalf of the Corporation.

Notary Public

My commission expires: _____.

APPENDIX A

SCTC shall complete the following items:

1. Within **30 days** of the effective date of the Order submit an AST registration form and fees for review and approval to the SWRO.
2. Within **60 days** of the effective date of the Order submit closure documentation for the AST system to the SWRO for review and approval.
3. If closure documentation indicates a release has occurred at the tanks or associated piping, DEQ will issue a new pollution compliant number. SCTC shall upon written notification from DEQ submit abatement and site characterization reports in the time frame specified in the notification letter. SCTC shall address any request from the SWRO for changes or modifications to the abatement and site characterization reports within **30 days** of receiving a written notice.
4. Within **75 days** of the effective date of the Order submit a report for review and approval to the SWRO detailing the extent and nature of the release which is the subject of PC # 99-0371, risks to human and environmental receptors posed by the release, and proper disposal of contaminated soil resulting from the oil release. SCTC shall address any request for additional information concerning the site and the oil release within **20 days** of receiving a written notice from the SWRO.
5. If a corrective action plan ("CAP") is needed as required by 9 VAC 25-580-280, SCTC shall submit a CAP for review and approval within **60 days** of receiving written request from the SWRO.